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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LEI HUA,

Plaintiff,

v.

MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security;
EMILIO T. GONZALEZ, Director of United
States Citizenship & Immigration Services,
Defendants.

No. C 07-5184 HRL

ANSWER

Defendants hereby submit their answer to Plaintiff's Complaint for Writ in the Nature of
Mandamus and Declaratory Judgment Under 28 U.S.C. § 1361.

1. Paragraph One consists of Plaintiff's characterizations of the lawsuit for which no answer is
necessary; however, to the extent a response is deemed to be required, the Defendants deny that
they have improperly withheld action on Plaintiff's application to his detriment.

PARTIES

2. Defendants admit the allegations in Paragraph Two.

3. Defendants admit the allegations in Paragraph Three.

4. Defendants admit the allegations in Paragraph Four.

ANSWER
C07-5184 HRL

JURISDICTION

5. Paragraph Five consists of Plaintiff's allegation regarding jurisdiction, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants deny the allegations in this paragraph.

VENUE

6. Paragraph Six consists of Plaintiff's allegations regarding venue, to which no responsive pleading is required.

INTRADISTRICT ASSIGNMENT

7. Paragraph Seven consists of Plaintiff's allegations regarding intradistrict assignment, to which no responsive pleading is required.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. Defendants deny the allegations in this paragraph.

CAUSE OF ACTION

9. Defendants admit the allegations in Paragraph Nine.

10. Defendants are without sufficient information to admit or deny the allegations in Paragraph Ten.

11. Defendants are without sufficient information to admit or deny the allegations in Paragraph Eleven.

12. Defendants admit the allegations in Paragraph Twelve.

13. Defendants are without sufficient information to admit or deny the allegations in Paragraph Thirteen.

14. Defendants are without sufficient information to admit or deny the allegations in Paragraph Fourteen.

15. Defendants are without sufficient information to admit or deny the allegations in Paragraph Fifteen.

16. Defendants are without sufficient information to admit or deny the allegations in Paragraph Sixteen.

17. Defendants are without sufficient information to admit or deny the allegations in

ANSWER

C07-5184 HRL

1 Paragraph Seventeen.

2 18. Defendants are without sufficient information to admit or deny the allegations in
3 Paragraph Eighteen.

4 19. Defendants are without sufficient information to admit or deny the allegations in
5 Paragraph Nineteen.

6 20. Defendants are without sufficient information to admit or deny the allegations in
7 Paragraph Twenty.

8 21. Defendants admit the allegations in Paragraph Twenty-One.

9 22. Defendants are without sufficient information to admit or deny the allegations in
10 Paragraph Twenty-Two.

11 23. Defendants are without sufficient information to admit or deny the allegations in
12 Paragraph Twenty-Three.

13 24. Defendants are without sufficient information to admit or deny the allegations in
14 Paragraph Twenty-Four.

15 25. Defendants are without sufficient information to admit or deny the allegations in
16 Paragraph Twenty-Five.

17 26. Defendants are without sufficient information to admit or deny the allegations in
18 Paragraph Twenty-Six.

19 27. Defendants admit the allegations in Paragraph Twenty-Seven.

20 28. Paragraph Twenty-Eight consists of Plaintiff's characterization of this action for which no
21 answer is necessary, however, to the extent an answer is deemed to be required, Defendants deny
22 the allegations in this Paragraph.

23 29. Defendants are without sufficient information to admit or deny the allegations in
24 Paragraph Twenty-Nine.

25 30. Defendants deny the allegations in Paragraph Thirty.

26 31. Paragraph Thirty-One consists of Plaintiff's characterization of this action for which no
27 answer is necessary, however, to the extent an answer is deemed to be required, Defendants deny
28 the allegations in this Paragraph.

ANSWER
C07-5184 HRL

32. Paragraph Thirty-Two consists of Plaintiff's characterization of this action for which no answer is necessary, however, to the extent an answer is deemed to be required, Defendants deny the allegations in this Paragraph.

33. Paragraph Thirty-Three consists of Plaintiff's characterization of this action for which no answer is necessary, however, to the extent an answer is deemed to be required, Defendants deny the allegations in this Paragraph.

PRAYER

34. Paragraph Thirty-Four consists of Plaintiff's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

FIRST AFFIRMATIVE DEFENSE

The court lacks jurisdiction over the subject matter of this action.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

No acts or omissions by the United States or its employees were the proximate cause of any injury or damages to the Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

At all times alleged in the complaint, Defendants were acting with good faith, with justification, and pursuant to authority.

FIFTH AFFIRMATIVE DEFENSE

Defendants are processing the application referred to in the Complaint to the extent possible at this time. Accordingly, no relief as prayed for is warranted.

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1 WHEREFORE, Defendants pray for relief as follows:

2 That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's complaint
3 with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief as it deems
4 just and proper under the circumstances.

5 Dated: December 14, 2007

Respectfully submitted,

6 SCOTT N. SCHOOLS
7 United States Attorney

8 /s/
9 ILA C. DEISS
10 Assistant United States Attorney
11 Attorneys for Defendants
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